

November 2, 2011

George E. Park, Jr., Treasurer
Placer County Republican Party
401 Bremerton Ct.
Roseville, CA 95661

Re: Your Request for Advice
Our File No. A-11-071

Dear Mr. Park:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

1. How must the Placer County Republican Party (PCRP) determine the value of office space provided to the Allard for Assembly 2011 committee (“Allard committee”) for purposes of reporting an in-kind contribution?
2. In the future, may PCRP accept reimbursement from a committee for the use of the office space?

CONCLUSIONS

1. PCRP must utilize the actual fair market value of the office space and report it as an in-kind contribution to the candidate.
2. PCRP may accept a reimbursement from a committee for use of office space.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

According to your letter dated April 4, 2011, emails from you dated April 27, June 21 and July 25, 2011 as well as telephone conversations with you on April 28, 2011, these are the facts presented by you:

1. PCRCP has a campaign committee registered with the CA Secretary of State's office, committee ID #743461.
2. PCRCP leased property in Roseville, CA for its headquarters office. The normal lease payment for this office space is \$1,050 per month, plus the cost of utilities. In January 2011, PCRCP received a discount on this amount from the landlord, Headquarters Partnership, and paid \$997.50 instead of its usual \$1,050. This discount was not available to members of the public because PCRCP was Headquarters Partnership's only tenant in January, 2011.
3. PCRCP provided the Allard committee use of a portion of PCRCP's Roseville office space during the month of January, 2011. You estimate that the Allard committee used approximately 20% of the space for approximately a week and a half.
4. Your letter includes a detailed analysis of the costs incurred by PCRCP for the portion of space used by the Allard campaign committee in January, and asks whether PCRCP may use this cost analysis to determine the value of this in-kind contribution for reporting.

ANALYSIS

Under the Act, "a contribution" is any payment made for political purposes without full and adequate consideration to the donor. (Section 82015; regulation 18215.) A payment is made for political purposes if it is received by or made at the behest of a candidate, unless it is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. (Section 82015(b)(2)(B).) A payment is made at the behest of a candidate if it is made in cooperation, consultation, coordination, or concert with the candidate. (Regulation 18225.7.)

In this instance, PCRCP provided office space to candidate Allard's campaign at no charge, and the Allard campaign used the office for political purposes. Therefore, this payment qualifies as a non-monetary contribution under the Act.

Valuation of In-Kind Contributions

Under Section 82025.5 of the Act, filers must report the fair market value of in-kind contributions. Specifically, this section states, in part:

“Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value, and a description of the goods, services, facilities or other thing of value shall be appended to the report or statement.”

The Commission has previously addressed the valuation of donated office space and advised that the value is a comparable rental rate for similar office space in the area, and that the fair market value is the price at which the candidate could obtain the goods or services on the open market. (*Zamora* Advice Letter No. A-03-267.) In another question involving the valuation of office space, the Commission advised that a committee could utilize the cost per square foot of the donated space to determine the fair market value and since the space was over 2,000 square feet it should also include a share of utility bills. (*Tapella* Advice Letter No. A-94-238).

Your letter requests approval to use a specific formula to determine the fair market value of the rental space using a formula based on square footage and a time comparison with the number of hours the PCRCP worked in January. We agree that a formula based on square footage and time used is permissible. However, since the rental agreement was a fixed monthly cost, the time used by the Allard Committee should not be divided by the hours used by PCRCP. This is because the number of hours worked did not affect the fixed cost of the monthly rent. Therefore, we do not agree with your suggested value of \$15.80 but believe the value would be more in the range of \$100-130, 20% of the rent for approximately a week and a half.

As noted earlier, the FPPC is not a finder of fact and has not adopted a regulation that provides a specific valuation method.

Your letter does not indicate that the Allard committee received any services from PCRCP other than the office itself, but it should be noted that if the Allard campaign committee received any other tangible or intangible items of value, the fair market value of those services should also be included when calculating the total value of the in-kind contribution. For example, if the office provided a paid receptionist or janitorial services, office equipment, supplies, etc., the fair market value of those must be included when calculating the total value of the contribution.

The Act requires that campaign committees report contributions made (Section 84211). Since PCRCP made an in-kind contribution, it must report this contribution on Campaign Form 460, Schedule D.

There is nothing in the Act that would prohibit you from accepting reimbursement from a campaign for use of office space as long as the reimbursement is the fair market value. Such payments are reported on Schedule I of the campaign disclosure form, Form 460.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery Morazzini
General Counsel

By: Lynda Cassady
Technical Assistance Division Chief

LC:jgl